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COMMONWEALTH EDISON COMPANY )

In the matter of the )

Energy Efficiency and Demand Response Plan )

Filed pursuant to Section 12- 103(f) of the )

Public Utilities Act )

Docket No. 07-0540

**BRIEF ON EXCEPTIONS  
OF THE NATURAL RESOURCES DEFENSE COUNCIL**

Henry L. Henderson  
Director - NRDC Midwest Program  
101 North Wacker Drive, Suite 609  
Chicago, IL 60606  
[hhenderson@nrdc.org](mailto:hhenderson@nrdc.org)  
(312) 780-7432

February 1, 2008

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## **I. INTRODUCTION AND SUMMARY OF POSITION**

The Natural Resources Defense Council (NRDC) supports the Proposed Order's qualified approval of the Commonwealth Edison Company's (ComEd) Energy Efficiency and Demand Response Plan. Plan approval by February 15, 2008 will allow ComEd soon to deliver cost-effective demand-side resources to ratepayers in Illinois that will save ratepayers money and reduce carbon emissions and air pollutants compared to conventional supply-side resources. Furthermore, NRDC strongly commends Administrative Law Judges (ALJ) Sainsot and Kimbrel for preparing a detailed, thoughtful Proposed Order (PO) on many complicated issues of first impression in Illinois under an extremely compressed time frame. The PO is particularly impressive because it addresses not only the narrow issue of whether the Plan meets statutory requirements and should be approved, but also summarizes and responds to the many additional complex issues that parties raised in the course of reviewing and commenting on the Plan. The PO's analysis and conclusions reflect careful, well-reasoned and forward-thinking judgment that will serve to foster the success of the demand-side portfolio now and in the future.

In this brief, NRDC identifies and advocates for: (A) the central elements of the PO that should remain unaltered in the final Order, as they are essential for supporting demand-side portfolio and program performance during the implementation phase of the Plan; and (B) the several critical modifications to strengthen the final Order necessary to assure effective development and implementation of the Plan for which we provide specific exception language.

### **Essential Elements of the Proposed Order that Should Remain in the Final Order**

The following elements of the PO are essential for the success of the portfolio and reaching program goals, and should remain in the final Order:

- **Further Reduce Consumption:** Recognition that much more needs to be done to reduce consumption in IL;
- **Portfolio-level TRC:** Adoption of portfolio, rather than measure-level, Total Resource Cost (TRC) analysis;
- **Stakeholder Group:** Adoption of the Stakeholder Group;
- **“Banking” savings;**
- **“Deeming”:** “Deeming” measure savings for lighting but not for Net-To-Gross (NTG) ratios;
- **Staff Workshops:** Recognizing need for and requiring Staff workshops;
- **Evaluation, Measurement & Verification (EM&V) issues;**
  - **Independent Evaluator Not Dispositive of Performance:** The PO appropriately concludes that ComEd’s independent evaluator is not the only entity competent to provide evidence about whether ComEd has met its energy savings targets;
  - **ICC Hires and Fires EM&V Contractor:** Also, the PO appropriately determines that for the EM&V contractor to satisfy the statutory requirement of “independence”, the ICC must have ability to hire and fire the utility’s independent EM&V contractor.

#### Requested Changes to the Proposed Order

NRDC requests that the final Order be modified to better meet the goals and requirements of the energy efficiency and demand side portfolio law, as follows:

- **Stakeholder Group:**
  - **Expand SG Objectives:** The PO should expand Stakeholder Group objectives, consistent with ComEd’s testimony;
  - **Require SG Annual Report:** The PO should require that ComEd and the Stakeholder Group work together to provide the ICC with an Annual Report;
- **“Spillover”:** the independent EM&V contractor, under ICC Staff guidance, rather than ComEd, should determine whether it is appropriate to include spillover in NTG ratios;
- **Leveraging City Programs:** in addition to the requirement that ComEd “explore synergies” with existing City programs, ComEd should be required to work with the City to analyze whether the existing programs will increase portfolio cost-effectiveness or otherwise enhance portfolio effectiveness;
- **Statewide Consistency:** the final Order should add a required showing: even if ICC does not want to *require* statewide consistency, it should make the stated policy preference for

statewide consistency meaningful by requiring ComEd to demonstrate how the portfolio is statewide consistent, and explaining how differences in the portfolio result from the differences in the respective service territories.

- **Early Program Launch:** ComEd should be given the right to launch programs early if they are able to, like Ameren. The sooner the programs are on the street, the sooner they will produce savings and environmental benefits for the ratepayers of IL.

## **II. BRIEF ON EXCEPTIONS**

### **a. The Final Order Should Retain Key Important Elements of the Proposed Order**

The PO is important not only because it approves the Plan, but also because it begins to establish a regulatory oversight framework for demand-side resources that is essential for maximizing cost-effective savings and for producing measurable and reliable savings. The final Order should retain the elements listed below contained in the Proposed Order:

#### **i. Recognition that Consumption Can be Further Reduced in IL**

NRDC agrees strongly with the PO as it addresses the issue of increasing the statutorily-imposed energy efficiency and demand response goal in IL, and includes the forward-thinking statement that “much more needs to be done in Illinois in order to reduce energy consumption.” (PO, mimeo, p. 27.) Although the current goals will provide measurable demand-reduction, they do not reflect the full potential of demand-side resources. NRDC recommends that staff consider seeking comments on the possible magnitude of cost-effective energy efficiency and demand-response in the staff-led workshops. In addition, ComEd or the technical consultant to the Stakeholder Group could commission a technical potential study to

quantify the full potential for the demand-side, which would indicate how energy savings targets could be increased in the future.

**ii. Adoption of Portfolio-Level TRC Analysis**

NRDC strongly supports the PO finding, based on the Department of Commerce and Economic Opportunities' (DCEO) testimony, that the TRC should be calculated at the portfolio, rather than measure, level. (PO, mimeo, p. 28.) Portfolio-level TRC analysis is consistent with the statutory directive that the utilities "demonstrate that its overall portfolio of energy efficiency and demand-response measures . . . [not including low-income programs] . . . are cost-effective using the total resource cost test . . . ." (Section 12-102(f)(5) of the Public Utilities Act.) Furthermore, it is sound policy because portfolio-level TRC calculation will result in increased potential energy savings, ratepayer cost savings, and environmental benefits compared to measure-level TRC analysis.

**iii. Permitting *de minimus* "Banking" of Savings**

The Proposed Order permits some banking of savings and *de minimus* cost overruns associated with ComEd's achieving increased savings compared to targets. (Proposed Order, mimeo, p. 39.) NRDC supports banking, because banking will encourage ComEd to produce the greatest amount of savings within the statutory spending cap. NRDC recommends that Staff address in its workshops whether "unlimited" banking, as long as spending is within statutory spending caps, would better maximize all cost-effective energy efficiency that a 10% limit on banking.

**iv. “Deeming” Measure Savings for Lighting but not NTG Ratios**

The Proposed Order permits “deeming” of lighting measures until better values are produced, but does not adopt NTG ratios from California.

(Proposed Order, mimeo, pp. 41-4.) This resolution of the “deeming” issue strikes a reasonable balance between providing some certainty to ComEd about forecast values, while directing Midwest specific values for NTG ratios that are likely to be superior to those produced in California, a jurisdiction with very different characteristics than IL.

**v. Requiring Further Staff-led Workshops**

The Proposed Order recognizes that Plan approval is only the first step in ensuring transparency and accountability to ratepayers to ensure funds are prudently and reasonably spent, and to produce measurable and reliable savings from energy efficiency and demand response that can offset conventional supply-side resources. Other jurisdictions that have produced successful energy efficiency and demand-response programs have robust regulatory oversight of the demand-side portfolio. The PO requirement for staff-led workshops will allow the important regulatory infrastructure to develop in IL on a more reasonable timeframe that was permitted by statute for this docket. (Proposed Order, mimeo, p. 45.) NRDC understands the PO requirement for staff-led workshops to be a significant commitment to building regulatory capacity and policy in



Illinois, and to collaborative with the Stakeholder process addressed in the PO and record of this proceeding; not in competition with the Stakeholder process, which is also critically important for reaching the requirements and goals of the law.

**vi. EM&V: Acknowledging that the Independent EM&V Contractor is Not the Only Entity Competent to Provide Evidence About ComEd's Performance**

The Proposed Order concludes that the Commission's review of ComEd's Plan to determine compliance with statutory targets is separate from the independent evaluation required by Section 103(f)(7). (Proposed Order, mimeo, p. 27.) This conclusion is a reasonable interpretation of the statute. In addition, given that EM&V funds are limited to 3%, other evidence might be needed and useful to assess compliance with targets and other statutory goals.

**vii. EM&V: The ICC Must Be Able to Hire and Fire ComEd's Independent EM&V Contractor**

The Proposed Order correctly interprets statutory language directing an "independent" evaluation of the cost-effectiveness of the portfolio of measures to mean that the *Commission*, rather than ComEd or the Stakeholder Group, should hire and fire the evaluator. (Proposed Order, mimeo, p. 45.) The independence of the evaluation would be seriously compromised if ComEd retained the authority to hire or fire the evaluator. Designating ComEd to be in charge of its own performance evaluation is like the fox guarding the hen house. Furthermore, this Conclusion is

consistent with practice in California, where the California Public Utilities Commission is in charge of EM&V contractors (including hiring, firing, contracting with the evaluators and contract administration) using funds collected by the utilities.

**b. The Final Order Should Contain Some Changes to Further Strengthen Oversight and Performance of the Emerging Demand-Side Portfolio**

**i. The Stakeholder Group Objectives Should Be Clarified and Expanded, Consistent with ComEd's Testimony**

The PO concludes that ComEd should "establish a stakeholder process to review ComEd's progress towards achieving the required energy efficiency and demand response goals." (PO, mimeo, p. 32.) ComEd and all other stakeholders, with the possible exception of ICC Staff, view the Stakeholder Group (SG) as essential for optimizing portfolio performance and providing accountability and transparency.

NRDC notes, first, that the role and value of the SG is separate and distinct from the purpose of Staff-led workshops. The essential purpose of the SG is to advise ComEd on optimizing its portfolio of programs.

Examples of issues that stakeholders might elect to address in the SG include: suggestions for additional programs that ComEd might consider adding in the future; suggested modifications to existing programs to improve program cost-effectiveness or program penetration; and ways to improve marketing and outreach to customers to get more customers to select energy efficient technologies. In contrast, the ICC Staff-led workshops are needed to solicit stakeholder input on the ongoing

regulatory oversight framework that is essential to ensure that ComEd is meeting its goals and the savings are measurable and reliable. Topics that could be addressed in ICC Staff-led workshops include: appropriate measure savings values; appropriate NTG ratios for IL; financial and accounting rules for EE Funds, and a statewide public cost-effectiveness calculator. (NRDC Brief, p. 16.) If ComEd begins the SG before Staff-led workshops commence, ComEd should solicit input from the SG on what areas should be deferred to the Staff-led workshops to minimize unnecessarily duplication and administrative burden on ComEd, ICC Staff, and SG members.

Second, NRDC recommends that the PO language addressing the role of the SG be expanded to more closely reflect ComEd's testimony and proposed role for the SG. Expanding the language will provide needed guidance and direction to the SG, will help clarify its role, and make the group more effective and efficient. ComEd's proposal was to use the SG to review portfolio progress, and also to contribute to the "continued strengthening of the portfolio." (ComEd Ex.1.0, p. 27.)

ComEd describes a broad, comprehensive role for the Stakeholder Group and assigns to it several important responsibilities, including:

- **Reviewing Final Program Designs** (ComEd, Ex. 1.0);
- **Performance Metrics:** establishing agreed-upon performance metrics for measuring program performance; (ComEd Ex. 1.0, p. 27.);

- **Reviewing Plan Progress Against Metrics:** Providing a process for reviewing program performance against the metrics and making recommendations to modify or adjust program designs or implementation plans; (*Id.*)
- **Reviewing Plan Progress Towards Achieving Goals:** Reviewing ComEd's progress towards achieving the required energy efficiency and demand response goals (ComEd Ex. 2.0, p. 37.)
- **Developing Reporting Form and Frequency:** Working out the frequency and nature of reporting (ComEd Ex. 9.0, p. 13.)
- **Reviewing Program Budget Shifts:** Reviewing reallocation of funds between programs where the change in budget for any specific program is more than 20% (ComEd. Ex. 2.0, p. 38.)
- **Reviewing Program Additions or Discontinuations:** Reviewing discontinuation or addition of new programs (*Id.*)
- **Developing an Evaluation Protocol** (*Id.*)
- **Advising on EM&V RFP Design:** Advising on the design of the request-for-proposal ("RFP") process for independent evaluation services (ComEd, Ex. 2.0, p. 12.)
- **Assisting with EM&V Contractor Selection:** Assisting with the selection of an Evaluation, Measurement and Verification (EM&V) contractor (*Id.*)
- **Reviewing EM&V Contractor Dismissal:** Reviewing ComEd's dismissal of an evaluation contractor under the terms of the contracts signed with that contractor, and the hiring of a new contractor (ComEd Ex. 2.0, p. 38.)

- **Reviewing New Proposed Programs for the Next Program Cycle:** Supporting the review of program options for inclusion in the next three-year Plan (*Id.*)
- **Advising on Program and EM&V Issues:** Advising on issues related to program implementation and EM&V

Some of the issues that ComEd identifies for the SG, such as reporting form and frequency and EM&V issues, should ultimately be determined by the regulator (the ICC), as they relate to effective oversight, not program design and implementation, which is ComEd's responsibility. NRDC's proposed additions on the role of the SG are set forth below in the "exceptions" section.

**ii. ComEd and the Stakeholder Group Should Work Together To Provide An Annual Report to the ICC**

The PO concludes that "The advisory committees need not report to the Commission." (PO, mimeo, p. 33.) To provide thoughtful, meaningful and helpful review and comment to ComEd, stakeholder group members will likely put significant time into the SG process. Furthermore, SG review and input should help the ICC assess whether ComEd's expenditures were prudent and made good use of ratepayer funds and whether ComEd met statutory goals. It will be useful for ComEd and SG members to reflect and report to the Commission on whether the SG is accomplishing the stated objectives, and to identify ways to improve the process. (NRDC Direct Testimony, p. 19.) The annual report does not need to be a big, expensive undertaking. The SG facilitator could prepare an annual report by soliciting comments from participants on how the well

the process has worked, and how it could be improved to make better use of time. In addition, the SG facilitator could append the “Comment Tracking and Response System” which lists SG member’s recommendations, and indicates whether ComEd modified programs or the portfolio in response to the recommendations.

**iii. The Independent EM&V Contractor, Rather than ComEd, Should Determine Whether to Include “Spillover” in NTG Ratios**

The Proposed Order states that: “we decline to order ComEd to exclude “spillover” from any Net to Gross ratio calculation.” (PO, mimeo, p. 44.) However, the PO notes that the ICC will “hire and fire” the independent evaluator.” Given that the evaluator is supposed to be independent, and make an independent determination of how ComEd’s portfolio of programs should be assessed to maximize the benefit from the limited EM&V budget, it is properly the independent evaluator, under the guidance of ICC Staff, who should assess whether spillover should be included in the NTG ratio.

**iv. ComEd Should Be Required to Work With the City To Analyze Whether The Existing Programs Will Increase Portfolio Cost-Effectiveness Or Otherwise Enhance Portfolio Effectiveness**

NRDC strongly supports the conclusion in the PO that ComEd should work with the City of Chicago to evaluate how the City’s existing programs can be coordinated with and used to leverage the effectiveness of ComEd’s portfolio. NRDC applauds the City for its commitment to making Chicago the greenest city in the nation, and the substantial effort it

has already put into developing and implementing energy efficiency programs. Maximizing cost-effective demand-side programs requires an “all hands effort”. Unlike traditional utility services relating to “pipes and wires”, ComEd does not and should not have a monopoly on the design and implementation of demand-side programs. The City’s leadership on demand-side issues should be supported and encouraged. (PO, mimeo, pp. 48- 49.)

NRDC recommends that the Proposed Order clarify ComEd’s duties with respect to City’s programs to ensure that the PO directive to “explore synergies” is a meaningful activity that requires analysis and thought. NRDC recommends adding language to the PO, set forth below.

**v. ComEd Should Be Required to Demonstrate How Its Portfolio is Statewide Consistent, and How Differences Result from Differences in ComEd and Ameren’s Service Territories**

The Proposed Order states a policy preference for statewide consistency “when such coordination reduces costs or administrative burdens, or, when such coordination would improve program performance.” (PO, mimeo, p. 54.) However, the PO declines to *require* coordination.

Statewide consistency provides real and obvious benefits to customers as well as stakeholders. Statewide consistency that reduces costs or improves program performance is consistent with the long-established regulatory principles of least-cost planning and prudent use of ratepayer funds. Both the ICC, in its regulatory capacity, and ComEd are stewards of ratepayer funds and have a duty to assure ratepayer funds are

not squandered and instead are used efficiently and effectively. The rationale that ComEd and Ameren provide for not supporting statewide consistency is that their service territories are different. (*Id.*) However, service territory differences do not necessarily mean programs need to be different to be effective. Different programs, with different incentive levels, program participation requirements and applications, particularly for the many customers that operate in both service territories such as big box retailers, will absolutely and unnecessarily increase costs and increase customer confusion, resulting in a needless squandering of ratepayer funds and less effective programs.

If the Proposed Order declines to require consistency and coordination, even when doing so will reduce costs and/or improve program effectiveness, it should at a minimum require the utilities to make a showing of what areas of their portfolios are consistent, and which are not. For areas that are inconsistent, the utilities should be required to describe how differences in the programs or portfolio result from differences in the respective service territories.

**vi. ComEd, like Ameren, Should Be Permitted to Launch Programs Before June 1**

NRDC requests that ComEd, like Ameren, be permitted to launch energy efficiency and demand response programs as soon as possible. The sooner programs are launched, the sooner they will produce savings.



### III. EXCEPTIONS

**a. Stakeholder Group (PO, mimeo, p. 32.)**

The Commission agrees with ComEd that it should establish a stakeholder group process to review ComEd's progress towards achieving the required energy efficiency and demand response goals *and to continue strengthening the portfolio. The stakeholder group's responsibilities include: reviewing final program designs; establishing agreed-upon performance metrics for measuring portfolio and program performance; reviewing Plan progress against metrics and against statutory goals; reviewing program additions or discontinuations, reviewing new proposed programs for the next program cycle and reviewing program budget shifts between programs where the change is more than 20%.*

**b. Stakeholder Group Annual Report (PO, mimeo, p. 33.)**

The advisory committee ~~need not~~ *shall* report to the Commission. *The report may be prepared by the SG facilitator, and may include observations from participants on how well the process worked, how it might be improved, and a list of recommendations from SG members on program and portfolio performance, with a response from ComEd to the recommendations.*

**c. Including "Spillover" in the NTG ratios (PO, mimeo, p. 44.)**

~~We decline to order ComEd to exclude "spillover" from any Net to Gross ratio calculation.~~ *The independent EM&V contractor, in consultation with ICC Staff, shall determine whether "spillover" shall be included in the Net to Gross ratios.*

**d. Leveraging City Programs (PO, mimeo, p. 30.)**

The City's proposal is reasonable and should be adopted. Mr. Brandt indicated a willingness to explore "potential synergies" between its programs and other current programs. Thus, ComEd appears to be willing to adopt the City's proposal. *ComEd is required to work with City to analyze whether City's existing programs could be leveraged to increase portfolio cost-effectiveness, or otherwise improve the portfolio's effectiveness, for example by making energy efficiency available to customers who might not participate in or be reached by ComEd's programs.* ComEd is directed to explore this topic with its advisory committee and use information compiled by the AG and the City of Chicago, as well as any

other information that is readily available. ~~to determine whether ComEd can add to existing programs in a manner, in which, the funds collected pursuant to the statute are used in a manner that reduces program costs, provided that such "leveraging" would meet the TRC test.~~ *ComEd is directed to determine whether ComEd's program dollars could support City's existing programs to reduce portfolio TRC or increase portfolio effectiveness.*

**e. Statewide Consistency (Proposed Order, mimeo, p. 30.)**

This Commission agrees that coordination between Ameren and ComEd, as well as with DCEO, when such coordination reduces costs or administrative burdens, or, when such coordination would improve program performance, is desirable. We encourage the utilities to coordinate as much as possible. However, we decline to *require* the utilities to do so. *When the utilities present final program designs to the Stakeholder Group for review and comment before the June 1, 2008 Plan start date, they shall identify all programs and program features that are statewide consistent. For programs and program features that are not consistent, the utilities shall identify how the differences result from the unique circumstances of its service territory.*

**f. Program Launch Before June 1 (Add new section starting p. 55.)**

***Plan Implementation Dates***

*The implementation date for Ameren's energy efficiency programs is set by the Statute. It states that the utility will implement cost-effective energy efficiency measures that reduce 0.2% of energy delivered in the year commencing on June 1, 2008. (220 ILCS 5/12-103(b)(1). ComEd is permitted to make its energy efficiency and respond response products and services available as soon as possible.*

***Analysis and Conclusions***

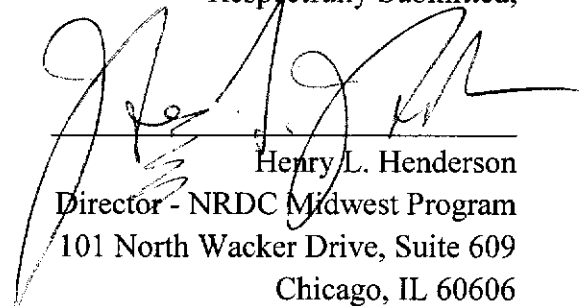
*ComEd is permitted to commence its Plan activities before the statutory date of June 1, 2008.*

#### IV. CONCLUSION AND REQUEST

Illinois is on the brink of a New Energy Future. This future will involve meeting new load growth with cost-effective demand-side resources, and meeting residual load growth with cleaner energy sources. Both customers and the environment will benefit. NRDC looks forward to ongoing constructive and productive engagement with ComEd, the ICC, and other stakeholders to make the New Energy Future a reality.

NRDC requests that the Commission adopt the Proposed Order, with the exceptions noted herein.

Respectfully Submitted,



Henry L. Henderson  
Director - NRDC Midwest Program  
101 North Wacker Drive, Suite 609  
Chicago, IL 60606  
[hhenderson@nrdc.org](mailto:hhenderson@nrdc.org)  
(312) 780-7432

February 1, 2008

**State Of Illinois  
ILLINOIS COMMERCE COMMISSION**

**COMMONWEALTH EDISON  
COMPANY**

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**Docket No. 07 – 0540**

**NOTICE OF FILING**

To: Service List

Please take notice that on February 1, 2008, I caused to be sent to Elizabeth A. Rolando, Chief Clerk, Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois, 62701, by U.S. Postal Service, the Natural Resource Defense Council's Brief On Exceptions in the captioned proceeding.

Dated: February 1, 2008



Henry L. Henderson

Director, Midwest Program

Natural Resources Defense Council

101 North Wacker Drive, Suite 609

Chicago, Illinois 60606

hhenderson@nrdc.org

**State Of Illinois  
ILLINOIS COMMERCE COMMISSION**


**COMMONWEALTH EDISON  
COMPANY**

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**Docket No. 07 – 0540**

**CERTIFICATE OF SERVICE**

I, Henry L. Henderson, hereby certify that a copy of the Natural Resource Defense Council's Brief On Exceptions in the above captioned docket, was this day electronically served upon the parties listed in the Service List for this docket, in accordance with the Rules of Practice of the Illinois Commerce Commission.

Dated: February 1, 2008

  
Henry L. Henderson

Director, Midwest Program

Natural Resources Defense Council

101 North Wacker Drive, Suite 609

Chicago, Illinois 60606

hhenderson@nrdc.org

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Service List in 07-0540 for 2/1/2008

Mailing Labels

Address	Type	Party of Record	Date Added	Date Removed
Allan V. Abinoja Asst. Attorney General General Law Bureau Attorney General's Office 100 W. Randolph St., 13th Fl. Chicago, IL 60601  E-Mail: <a href="mailto:aabinoja@atg.state.il.us">aabinoja@atg.state.il.us</a>	MIS	Yes	1/10/2008	
Ann Alexander Senior Attorney Natural Resources Defense Council 101 N. Wacker Dr., Ste. 609 Chicago, IL 60606  E-Mail: <a href="mailto:aalexander@nrdc.org">aalexander@nrdc.org</a>	INT	Yes	12/6/2007	
Darryl Bradford Vice President Commonwealth Edison Company PO Box 805379 Chicago, IL 60680-5379  E-Mail: <a href="mailto:darryl.bradford@exeloncorp.com">darryl.bradford@exeloncorp.com</a>	PET	Yes	11/9/2007	
Jon M. Casadont BlueStar Energy Services, Inc. 363 W. Erie St., Ste. 700 Chicago, IL 60610  E-Mail: <a href="mailto:jcasadont@bluestarenergy.com">jcasadont@bluestarenergy.com</a>	INT	Yes	12/4/2007	
Scott H. DeBroff Atty. for ConsumerPowerline Smiegel Anderson & Sacks 4431 N. Front St., 3rd Fl. Harrisburg, PA 17110  E-Mail: <a href="mailto:sdebroff@sasllp.com">sdebroff@sasllp.com</a>	INT	Yes	11/30/2007	

---

Jay H. Dillavou MidAmerican Energy Company PO Box 657 666 Grand Ave. Des Moines, IA 50303	INT	Yes	12/18/2007
---	-----	-----	------------

E-Mail: [jhdillavou@midamerican.com](mailto:jhdillavou@midamerican.com)

---

Joseph E. Donovan Atty. for Coalition of Energy Suppliers DLA Piper US LLP 203 N. LaSalle St., Ste. 1900 Chicago, IL 60101-1293	INT	Yes	12/18/2007
---	-----	-----	------------

E-Mail: [joseph.donovan@dlapiper.com](mailto:joseph.donovan@dlapiper.com)

---

Jessica R. Falk Citizens Utility Board 208 S. LaSalle St., Ste. 1760 Chicago, IL 60604-1003	INT	Yes	11/8/2007
--	-----	-----	-----------

E-Mail: [jfalk@citizensutilityboard.org](mailto:jfalk@citizensutilityboard.org)

---

John Feeley Office of General Counsel Illinois Commerce Commission 160 N. LaSalle, Ste. C-800 Chicago, IL 60601	MIS	Yes	11/6/2007
---	-----	-----	-----------

E-Mail: [jfeeley@icc.illinois.gov](mailto:jfeeley@icc.illinois.gov)

---

David I. Fein Vice President Energy Policy - Midwest/MISO Constellation NewEnergy, Inc. 550 W. Washington Blvd., Ste. 300 Chicago, IL 60661	INT	Yes	11/15/2007
--	-----	-----	------------

E-Mail: [david.fein@constellation.com](mailto:david.fein@constellation.com)

---

Shannon Fisk Natural Resource Defense Council 101 N. Wacker Dr., Ste. 609 Chicago, IL 60606	INT	Yes	1/7/2008
--	-----	-----	----------

E-Mail: [sfisk@nrdc.org](mailto:sfisk@nrdc.org)

---

Cynthia A. Fonner Senior Counsel Constellation Energy Group, Inc. 550 W. Washington St., Ste. 300 Chicago, IL 60661	INT	Yes	11/15/2007
---	-----	-----	------------

E-Mail: [cynthia.a.fonner@constellation.com](mailto:cynthia.a.fonner@constellation.com)

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Carmen Fosco Office of General Counsel Illinois Commerce Commission 160 N. LaSalle St., Ste. C-800 Chicago, IL 60601-3104	MIS	Yes	11/6/2007
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E-Mail: [cfosco@icc.illinois.gov](mailto:cfosco@icc.illinois.gov)

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John Gomoll Coalition of Energy Suppliers 1111 W. 22nd St., 8th Fl. Oak Brook, IL 60523	INT	Yes	12/18/2007
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E-Mail: [john.gomoll@directenergy.com](mailto:john.gomoll@directenergy.com)

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Brian P. Granahan Environment Illinois Research & Education Center 407 S. Dearborn, Ste. 701 Chicago, IL 60605	INT	Yes	12/18/2007
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E-Mail: [bgranahan@environmentillinois.org](mailto:bgranahan@environmentillinois.org)

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Gary M. Griffin Asst. Attorney General General Law Bureau Attorney General's Office 100 W. Randolph St., 13th Fl. Chicago, IL 60601	MIS	Yes	1/10/2008
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E-Mail: [ggriffin@atg.state.il.us](mailto:ggriffin@atg.state.il.us)

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Michael Haugh Integrus Energy Services, Inc. 300 W. Wilson Bridge Rd., Ste. 350 Worthington, OH 43085	INT	Yes	12/18/2007
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E-Mail: [mphaugh@integrusenergy.com](mailto:mphaugh@integrusenergy.com)

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Susan J. Hedman Public Utilities Bureau Office of the Illinois Attorney General 100 W. Randolph St., 11th Flr. Chicago, IL 60601	INT	Yes	11/6/2007
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E-Mail: [shedman@atg.state.il.us](mailto:shedman@atg.state.il.us)

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Henry L. Henderson Director NRDC Midwest Program Natural Resources Defense Council 101 N. Wacker Dr., Ste. 609 Chicago, IL 60606	INT	Yes	12/6/2007
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E-Mail: [hhenderson@nrdc.org](mailto:hhenderson@nrdc.org)



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Arshia Javaherian Office of General Counsel Illinois Commerce Commission 160 N. LaSalle St., Ste. C-800 Chicago, IL 60601	MIS	Yes	11/6/2007
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E-Mail: [javahera@icc.illinois.gov](mailto:javahera@icc.illinois.gov)

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Mark R. Johnson Atty. for Commonwealth Edison Company Sidley Austin LLP One S. Dearborn St. Chicago, IL 60603	INT	Yes	11/7/2007
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E-Mail: [mrjohnson@sidley.com](mailto:mrjohnson@sidley.com)

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Ronald D. Jolly Assistant Corporation Counsel Dept. of Law City of Chicago 30 N. LaSalle, Ste. 900 Chicago, IL 60602-2580	INT	Yes	11/28/2007
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E-Mail: [rjolly@cityofchicago.org](mailto:rjolly@cityofchicago.org)

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Robert Kelter Environmental Law & Policy Center 35 E. Wacker Dr., Ste. 1300 Chicago, IL 60601	INT	Yes	11/20/2007
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E-Mail: [rkelter@elpc.org](mailto:rkelter@elpc.org)

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Douglas E. Kimbrel Administrative Law Judge Illinois Commerce Commission 160 N. LaSalle St., Ste. C-800 Chicago, IL 60601	MIS	Yes	1/14/2008
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E-Mail: [ekimbrel@icc.illinois.gov](mailto:ekimbrel@icc.illinois.gov)

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Charles Kubert Environmental Law & Policy Center 35 E. Wacker Dr., Ste. 1300 Chicago, IL 60601	INT	Yes	11/20/2007
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E-Mail: [ckubert@elpc.org](mailto:ckubert@elpc.org)

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Matthew R. Lyon Atty. for Commonwealth Edison Company Sidley Austin LLP One S. Dearborn St. Chicago, IL 60603	INT	Yes	11/7/2007
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E-Mail: [mrlyon@sidley.com](mailto:mrlyon@sidley.com)

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Barry Matchett Environmental Law & Policy Center 35 E. Wacker Dr., Ste. 1300 Chicago, IL 60601	INT	Yes	11/20/2007
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E-Mail: [bmatchett@elpc.org](mailto:bmatchett@elpc.org)

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Anne McKibbin Senior Policy Analyst Citizens Utility Board 208 S. LaSalle St., Ste. 1760 Chicago, IL 60604	INT	Yes	11/8/2007
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E-Mail: [amckibbin@citizensutilityboard.org](mailto:amckibbin@citizensutilityboard.org)

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Carla S. Meiners MidAmerican Energy Company PO Box 657 666 Grand Ave. Des Moines, IA 50303-0657	INT	Yes	12/18/2007
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E-Mail: [csmainers@midamerican.com](mailto:csmainers@midamerican.com)

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Kristin Munsch Asst. Attorney General Public Utilities Bureau Illinois Attorney General's Office 100 W. Randolph St., 11th Floor Chicago, IL 60601	INT	Yes	11/6/2007
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E-Mail: [kmunsch@atg.state.il.us](mailto:kmunsch@atg.state.il.us)

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Michael A. Munson Law Office of Michael A. Munson 123 North Wacker Drive Suite 1800 Chicago, IL 60606	INT	Yes	12/13/2007
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E-Mail: [michael@michaelmunson.com](mailto:michael@michaelmunson.com)

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Vu Nguyen MidAmerican Energy Company PO Box 657 666 Grand Ave. Des Moines, IA 50303	INT	Yes	12/18/2007
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E-Mail: [vnguyen@midamerican.com](mailto:vnguyen@midamerican.com)

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Michael S. Pabian Atty. for Commonwealth Edison Company 10 S. Dearborn St., 49th FL Chicago, IL 60603	PET	Yes	11/5/2007
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E-Mail: [michael.pabian@exeloncorp.com](mailto:michael.pabian@exeloncorp.com)

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Doug Paulin BlueStar Energy Services, Inc. 363 W. Erie St., Ste. 700 Chicago, IL 60610	INT	Yes	12/4/2007
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E-Mail: [dpaulin@bluestarenergy.com](mailto:dpaulin@bluestarenergy.com)

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J. Mark Powell Assistant Corporation Counsel Department of Law City of Chicago 30 N. LaSalle, Ste. 900 Chicago, IL 60602-2580	INT	Yes	11/28/2007
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E-Mail: [mark.powell@cityofchicago.org](mailto:mark.powell@cityofchicago.org)

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Erica Randall Paralegal Office of the Illinois Attorney General 100 W. Randolph St., 11th Fl. Chicago, IL 60601	INT	Yes	11/6/2007
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E-Mail: [erandall@atg.state.il.us](mailto:erandall@atg.state.il.us)

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Conrad Reddick Atty. for IIEC 1015 Crest Wheaton, IL 60187-6271	INT	Yes	12/28/2007
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E-Mail: [conradreddick@aol.com](mailto:conradreddick@aol.com)

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Eric Robertson Atty. for IIEC Lueders, Robertson, Konzen 1939 Delmar Ave. P.O. Box 735 Granite City, IL 62040	INT	Yes	11/20/2007
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E-Mail: [erobertson@lrklaw.com](mailto:erobertson@lrklaw.com)

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Ryan Robertson Atty. for IIEC Lueders Robertson & Konzen PO Box 735 1939 Delmar Ave. Granite City, IL 62040	INT	Yes	11/20/2007
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E-Mail: [ryrobertson@lrklaw.com](mailto:ryrobertson@lrklaw.com)

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Stephen J. Romeo Atty. for ConsumerPowerline Smigel Anderson & Sacks 4431 N. Front St. Harrisburg, PA 17110	INT	Yes	11/30/2007
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E-Mail: [sromeo@sasilp.com](mailto:sromeo@sasilp.com)

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Claudia Sainsot Administrative Law Judge Illinois Commerce Commission 160 N. LaSalle St., Ste. C-800 Chicago, IL 60601-3104	MIS	Yes	11/6/2007
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E-Mail: [csainsot@icc.illinois.gov](mailto:csainsot@icc.illinois.gov)

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Christopher N. Skey Atty. for Coalition of Energy Suppliers DLA Piper US LLP 203 N. LaSalle Street, Suite 1900 Chicago, IL 60601-1293	INT	Yes	12/18/2007
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E-Mail: [christopher.skey@dlapiper.com](mailto:christopher.skey@dlapiper.com)

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Julie Soderna Director of Litigation Citizens Utility Board 208 S. LaSalle St., Ste. 1760 Chicago, IL 60604	INT	Yes	11/8/2007
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E-Mail: [jsoderna@citizensutilityboard.org](mailto:jsoderna@citizensutilityboard.org)

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Rebecca Stanfield Director Environment Illinois Research and Education Center 407 S. Dearborn, Ste. 701 Chicago, IL 60605	INT	Yes	12/18/2007
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E-Mail: [rstanfield@environmentillinois.org](mailto:rstanfield@environmentillinois.org)

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Christopher C. Thomas Sr. Policy Analyst Citizens Utility Board 208 S. LaSalle, Ste. 1760 Chicago, IL 60604	INT	Yes	11/8/2007
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E-Mail: [cthomas@citizensutilityboard.org](mailto:cthomas@citizensutilityboard.org)

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Christopher J. Townsend Atty. for Coalition of Energy Suppliers DLA Piper US LLP 203 N. LaSalle St., Ste. 1500 Chicago, IL 60601-1293	INT	Yes	12/18/2007
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E-Mail: [christopher.townsend@dlapiper.com](mailto:christopher.townsend@dlapiper.com)

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Jennifer Witt Integrus Energy Services, Inc. 500 W. Madison St., Ste. 3300 Chicago, IL 60661	INT	Yes	12/18/2007
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E-Mail: [jlwitt@integrysenergy.com](mailto:jlwitt@integrysenergy.com)

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Service List Entries: 47